HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition No. 32649 of 1998

Dated: 30.03.2007

Between:

Abdul Wajid S/o Abudl Waheed

.... PETITIONER

AND

Municipal Council, Nizamabad rep. By its Commissioner, Nizamabad Municipality, Nizamabad and one another

.....RESPONDENTS

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition No.32649 of 1998

Order:

The petitioner approached this court by way of filing the present Writ Petition with the following prayer:

> "For the reasons disclosed in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ, more in the nature of Mandamus, declaring the action of the respondents in seeking to dispossess the petitioner from his land in Plot Nos. 13,14 and 15 in S.No. 2800 situated at Bodhan Road, Nizamabad as being arbitrary, illegal unconstitutional and violative of principals of natural justice and issue a consequential direction restraining the respondents from interfering with and dispossessing the petitioner of his land in Plot Nos. 13,14 and 15 in S.No. 2800 situated at Bodhan Road, Nizamabad and issue such other writ, order or direction as the Hon'ble Court deems fit and proper in the circumstances of the case."

The brief facts of the case are that the petitioner is the absolute owner of land admeasuring 1421.36 sq. yards in S.No. 2800 situated at bodhan Road, Nizamabad. He divided the said land into various plots and sold the plots to third parties retaining Plot Nos. 13,14, &15 for his use and he raised basement and also compound wall surrounding the said plots and as such the petitioner is in continuous possession and enjoyment of the said land from 1978 onwards. Be that as it may, the

officials of the respondents have visited the site of the petitioner on 19.11.1998 and threatened to dispossess him from the said site, as the land is covered by the proposed Master Plan that is to be prepared and sanctioned by the competent authority. Hence, the present Writ Petition assailing the action of the respondents in seeking to dispossess the petitioner from his land.

A detailed counter affidavit is filed by the first respondent Municipality stating that if there are any encroachments or illegal constructions made by the petitioner, it is the duty of the Municipality to remove such encroachments and unauthorized constructions.

Heard.

This Court is unable to accept the contentions put forth by the learned Standing Counsel. May be it is true that the petitioner is an encroacher, but it does not mean that the respondent-Municipality even without issuing any notice, as provided for under the Land Encroachment Act or any other law, which is in force can initiate any action.

Accordingly, this Writ Petition is allowed and the respondents are directed not to dispossess the petitioner from the land bearing Plot Nos. 13, 14 and 15 in S.No. 2800 situated at Bodhan Road, Nizamabad, without following due process of law. No order as to costs.

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GOPALA KRISHNA TAMADA, J.

Date: 30.03.2007
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